

## Chapter 9

# Legislation

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### 9.1.1 Notice of Proposed Amendments to the Securities Act and Excerpt from Budget Measures Act, 2006 (No. 2) (Bill 151)

#### NOTICE OF PROPOSED AMENDMENTS TO THE SECURITIES ACT

On October 18, 2006, proposed amendments to the *Securities Act* were introduced by the Minister of Finance as part of the Government's Fall 2006 Budget Bill. The proposed amendments are included in **Bill 151**, *Budget Measures Act, 2006 (No. 2)*.

The majority of the proposed amendments are intended to harmonize Ontario securities law with the laws of other jurisdictions.

Among the most significant changes being proposed to the *Securities Act* are amendments to:

- Give the Commission the authority to make an order, if the Commission considers that it is in the public interest, designating a person or company as an insider of a reporting issuer where the person or company has access to material information about the issuer in the ordinary course. The Commission is also given the authority to make an order that a person or company is not an insider where it is satisfied that the order would not be prejudicial to the public interest. Upon the request of the person or company potentially subject to the order, the Commission would be required to hold a hearing prior to making the order.
- Give the Commission rule-making authority to designate a person or company in a class of persons or companies as an insider of reporting issuer where the person or company has access to material information about the issuer in the ordinary course.
- Harmonize the definitions of "insider", "director" and "officer" with the language of other Canadian jurisdictions and repeal the definition of "senior officer" as a consequence.
- Extend the reporting requirements for insiders of a reporting issuer to include interests in related financial instruments. The Commission is also given new rule-making authority regulating the disclosure or furnishing of such information. New definitions are added to the Act for "related financial instrument", "economic interest in a security" and "economic exposure" as a consequence of the new insider reporting requirements.
- Harmonize the grounds for refusing to issue a receipt for a prospectus with the securities legislation of other Canadian jurisdictions.
- Give the Commission rule-making authority to prescribe requirements for the certification of prospectuses by persons or companies where the issuer is a trust (whether or not the business of the trust is conducted through another person), limited partnership or where the issuer is not a company, trust or limited partnership.
- Give the authority, where there has been a conviction for an offence under the Act, for a court to order, in addition to any other penalty that it may impose, that the convicted person or company make restitution or pay compensation in relation to the offence to an aggrieved person or company.
- Clarify that the Commission may publish rule proposals by giving notice that the Commission is seeking the requisite rule-making authority where it doesn't already have the authority to make the proposed rule.
- Clarify the effective date of an agreement, memorandum of understanding or arrangement entered into by the Commission with another securities or financial regulator, self-regulatory body or organization or jurisdiction. The amendment also provides an exception to the requirement to publish these documents in the Commission Bulletin in certain circumstances.

All of the proposed *Securities Act* amendments (with the exception of certain amendments relating to insider reporting) will come into force on Royal Assent of **Bill 151**. The amendments dealing with the extension of the insider reporting requirements to include interests in related financial instruments will come into force on a day to be proclaimed by the Lieutenant Governor in Council.

## Legislation

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The relevant portions of **Bill 151** are reprinted in Chapter 9 and may also be viewed on the Ontario Legislative Assembly's website at [www.ontla.on.ca](http://www.ontla.on.ca).

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EXCERPT FROM BUDGET MEASURES ACT, 2006 (NO. 2) (BILL 151)

SCHEDULE Z.5 SECURITIES ACT

**Explanatory Notes**

The amendments to the *Securities Act* harmonize Ontario securities law with the laws of other Canadian jurisdictions. The Schedule makes several amendments to the Act dealing with prospectus requirements, insider trading and self dealing and the regulation of take-over bids and business combinations. Many of these amendments involve the granting of additional rule-making authority to the Commission or changes to its existing rule-making authorities. In addition to the previously identified areas where amendments have been made, certain other amendments have been made and are identified below. The following summarizes the changes:

**Part XV of the Act (Prospectuses — Distributions)**

The re-enactment of subsection 61 (2) harmonizes the grounds for refusing to issue a receipt with the securities legislation of Canadian jurisdictions. The definition of “control person” is moved from section 138.1 to subsection 1(1) as a consequence. A consequential amendment is also made to the definition of “distribution” in subsection 1 (1).

A technical amendment is made to section 53 to reflect the fact that receipts are issued for a prospectus or an amendment to a prospectus. A technical amendment is also made to subsection 63(1) to reference simplified forms of prospectuses. Subsection 72(8) replaces existing subsections 72(8) to (11) and enables the Commission to publish a list of reporting issuers that are in default of any requirement of the Act or the regulations. The Commission will no longer provide certificates respecting a reporting issuer’s status with the Commission.

Various amendments are made to the Commission’s rule-making authority relating to prospectuses and distributions. Paragraph 16.1 of subsection 143(1) provides the Commission with the authority to prescribe requirements for certification of prospectuses by persons or companies where the issuer is a trust or limited partnership, or where the issuer is not a company, trust or a limited partnership. Technical amendments are also made to the Commission’s rule-making authority in paragraphs 15 and 16 of subsection 143(1).

**Part XX of the Act (Take-over Bids and Issuer Bids)**

The re-enactment of subsection 104(1) makes technical amendments to harmonize the language of the subsection with other provincial securities legislation.

The re-enactment of section 105 is intended to create harmonized wording to the analogous provisions of other jurisdictions dealing with court applications in respect of take-over bids and issuer bids. In addition, the reference to Ontario Court (General Division) is changed to the Superior Court of Justice.

Amendments to paragraphs 28 and 36 of subsection 143(1) provide the Commission with authority to regulate business combinations. The Commission has been given new authority in subsection 1(1.1) to define the term “business combination” in a rule.

**Part XXI of the Act (Insider Trading and Self-Dealing)**

The amendments to section 107 will extend requirements applicable to insiders of a reporting issuer to include interests in “related financial instruments”. A new definition for “related financial instruments” and the related terms “economic interest in a security” and “economic exposure” are to be added to subsection 1(1). The repeal of clause 106(2)(c) and section 108 are consequential to the re-enactment of section 107 and the proposed transfer of many of the requirements for insider reporting to the Commission’s rules. New rule-making powers to provide the Commission with the authority to make these rules are contained in paragraphs 30.1, 30.2 and 30.3 of subsection 143(1).

The amendments to the definition of “insider” in subsection 1(1) are related to the re-enactment of section 107 and the revised rule-making authority. As amended, the definition will include any person or company designated by the Commission as an insider by an order under subsection 1(11) and exclude any person or company designated not to be an insider by a Commission order under subsection 1(10). Under subsection 1(14), the Commission is required to hold a hearing before making such an order if one is requested by a person or company which would be subject to such an order. Subsection 1(11) provides that the Commission’s discretion to make an order designating a person or company to be an insider is limited to circumstances where the person or company has access to material information about the issuer in the ordinary course.

Technical amendments are made to the definition of “insider” to harmonize it with the language of securities legislation across Canada. Sections 83 and 83.1 are repealed as a consequence of the addition of subsections 1(10) to (14). In addition, the

definitions of “insider” and “reporting issuer” in subsection 1(1) of the Act are amended to refer to the new subsections 1(10) and (11).

### **Other Amendments**

#### **Investment Funds**

The re-enactment of section 116 extends the statutory standard of care from persons or companies responsible for the management of a mutual fund to investment fund managers of investment funds. Amendments are made to paragraphs 31 and 35 of subsection 143(1) as a consequence of the addition of the definition of “investment fund” to the Act in 2004.

#### **Forward-Looking Information**

Paragraph 22.1 of subsection 143(1) provides the Commission with authority to make rules in connection with the preparation, form and content of forward-looking information which is publicly disseminated, but is not part of a required filing with the Commission.

#### **Restitution Remedy**

Section 122.1 provides additional remedies where there has been a conviction for an offence under the Act. The court, in addition to any penalty that it may impose, will be entitled to order that the convicted person or company make restitution or pay compensation in relation to the offence to an aggrieved person or company.

#### **Memoranda of Understanding**

The amendments to section 143.10 clarify the effective date of an agreement, memorandum of understanding or arrangement entered into by the Commission with another securities or financial regulator, self-regulatory body or organization, or jurisdiction. The amendments also provide exceptions to the requirement to publish these agreements, memoranda and arrangements.

#### **Miscellaneous**

Amendments are made to the definitions of “director”, “investment fund manager”, “officer” and “self-regulatory organization” in subsection 1 (1) to harmonize the language of these provisions with that of other provincial securities legislation.

The definition of “senior officer” and other references to “senior officer” in the Act are being repealed as they are no longer necessary in light of the revised definition of “officer”.

Amendments are made to sections 138.1, 138.3, 138.4 and 138.5 providing civil liability for misrepresentations in disclosure materials in the secondary market to include references to the regulations.

Paragraph 9 of subsection 143(1) is re-enacted to correct a cross reference.

Paragraph 4 of subsection 143.2(2) is amended to clarify that the Commission in giving notice of proposed rule changes may give notice of rules that would be made in situations where it lacks rule-making authority but is seeking legislative changes to acquire the necessary authority.

**SCHEDULE Z.5**

**SECURITIES ACT**

**1. (1) Subsection 1 (1) of the Securities Act is amended by adding the following definitions:**

"control person" means,

- (a) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and, if a person or company holds more than 20 per cent of the voting rights attached to all outstanding voting securities of an issuer, the person or company is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer, or
- (b) each person or company in a combination of persons or companies, acting in concert by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and, if a combination of persons or companies holds more than 20 per cent of the voting rights attached to all outstanding voting securities of an issuer, the combination of persons or companies is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer; ("personne qui a le contrôle")

"economic exposure" in relation to a reporting issuer means the extent to which the economic or financial interests of a person or company are aligned with the trading price of securities of the reporting issuer or the economic or financial interests of the reporting issuer; ("risque financier")

"economic interest in a security" means,

- (a) a right to receive or the opportunity to participate in a reward, benefit or return from a security, or
- (b) an exposure to a loss or a risk of loss in respect of a security; ("intérêt financier dans une valeur mobilière")

"related financial instrument" means an agreement, arrangement or understanding to which an insider of a reporting issuer is a party, the effect of which is to alter, directly or indirectly, the insider's,

- (a) economic interest in a security of the reporting issuer, or
- (b) economic exposure to the reporting issuer; ("instrument financier connexe")

**(2) The definitions of "director", "insider", "investment fund manager", "officer" and "self-regulatory organization" in subsection 1 (1) of the Act are repealed and the following substituted:**

"director" means a director of a company or an individual performing a similar function or occupying a similar position for any person; ("administrateur")

"insider" means,

- (a) a director or officer of a reporting issuer,
- (b) a director or officer of a person or company that is itself an insider or subsidiary of a reporting issuer,
- (c) a person or company that has,
  - (i) beneficial ownership of, or control or direction over, directly or indirectly, securities of a reporting issuer carrying more than 10 per cent of the voting rights attached to all the reporting issuer's outstanding voting securities, excluding, for the purpose of the calculation of the percentage held, any securities held by the person or company as underwriter in the course of a distribution, or
  - (ii) a combination of beneficial ownership of, and control or direction over, directly or indirectly, securities of a reporting issuer carrying more than 10 per cent of the voting rights attached to all the reporting issuer's outstanding voting securities, excluding, for the purpose of the calculation of the percentage held, any securities held by the person or company as underwriter in the course of a distribution,

- (d) a reporting issuer that has purchased, redeemed or otherwise acquired a security of its own issue, for so long as it continues to hold that security,
- (e) a person or company designated as an insider in an order made under subsection (11),
- (f) a person or company that is in a class of persons or companies designated under subparagraph 40 v of subsection 143 (1); ("initié")

"investment fund manager" means a person or company that directs the business, operations or affairs of an investment fund; ("gestionnaire de fonds d'investissement")

"officer", with respect to an issuer or registrant, means,

- (a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager,
- (b) every individual who is designated as an officer under a by-law or similar authority of the registrant or issuer, and
- (c) every individual who performs functions similar to those normally performed by an individual referred to in clause (a) or (b); (dirigeant")

"self-regulatory organization" means a person or company that is organized for the purpose of regulating the operations and the standards of practice and business conduct, in capital markets, of its members and their representatives with a view to promoting the protection of investors and the public interest; ("organisme d'autoréglementation")

**(3) Clause (c) of the definition of "distribution" in subsection 1 (1) of the Act is repealed and the following substituted:**

- (c) a trade in previously issued securities of an issuer from the holdings of any control person,

**(4) The definition of "reporting issuer" in subsection 1 (1) of the Act is amended by,**

**(a) repealing clause (b) and substituting the following:**

- (b) that has filed a prospectus and for which the Director has issued a receipt under this Act,

**(b) repealing clause (f) and the portion of the definition after clause (f) and substituting the following:**

- (f) that is designated as a reporting issuer in an order made under subsection 1 (11);

**(5) The definition of "senior officer" in subsection 1 (1) of the Act is repealed.**

**(6) Clause (d) of the definition of "underwriter" in subsection 1 (1) of the Act is repealed and the following substituted:**

- (d) a bank listed in Schedule I, II or III to the Bank Act (Canada) with respect to securities described in paragraph 1 of subsection 35 (2) or to such banking transactions as are designated by the regulations;

**(7) Subsection 1 (1.1) of the Act is amended by adding ""business combination"" before ""derivatives"".**

**(8) Subsections 1 (8) and (9) of the Act are repealed.**

**(9) Section 1 of the Act is amended by adding the following subsections:**

**Relieving orders**

(10) If the Commission is satisfied that it would not be prejudicial to the public interest, it may make an order that, for purposes of Ontario securities law, a person or company is not,

- (a) an insider; or
- (b) a reporting issuer.

### Designation

(11) If the Commission considers that it is in the public interest, it may make an order that, for purposes of Ontario securities law,

- (a) person or company is an insider of a reporting issuer if the person or company would reasonably be expected to have, in the ordinary course, access to material information about the business, operations, assets or revenues of the issuer; or
- (b) person or company is a reporting issuer.

### Terms and conditions

(12) An order under subsection (10) may be made subject to such terms and conditions as the Commission may impose.

### Who may apply

(13) An order under subsection (10) or (11) may be made on application by an interested person or by the Director.

### Hearing

(14) The Commission shall not make an order under subsection (10) or (11) without giving the person or company that would be subject to the order an opportunity to be heard.

## 2. Subsection 53 (1) of the Act is repealed and the following substituted:

### Prospectus required

(1) No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

## 3. Subsection 61 (2) of the Act is repealed and the following substituted:

### Refusal of receipt

(2) The Director shall not issue a receipt for a prospectus or an amendment to a prospectus if it appears to the Director that,

- (a) the prospectus or any document required to be filed with it,
  - (i) does not comply in any substantial respect with any of the requirements of this Act or the regulations,
  - (ii) contains any statement, promise, estimate or forward-looking information that is misleading, false or deceptive, or
  - (iii) contains a misrepresentation;
- (b) an unconscionable consideration has been paid or given or is intended to be paid or given for any services or promotional purposes or for the acquisition of property;
- (c) the aggregate of,
  - (i) the proceeds from the sale of the securities under the prospectus that are to be paid into the treasury of the issuer, and
  - (ii) the other resources of the issuer,is insufficient to accomplish the purpose of the issue stated in the prospectus;

- (d) the issuer cannot reasonably be expected to be financially responsible in the conduct of its business because of the financial condition of,
  - (i) the issuer,
  - (ii) any of the issuer's officers, directors, promoters, or control persons, or
  - (iii) the investment fund manager of the issuer or any of the investment fund manager's officers, directors or control persons;
- (e) the business of the issuer may not be conducted with integrity and in the best interests of the security holders of the issuer because of the past conduct of,
  - (i) the issuer,
  - (ii) any of the issuer's officers, directors, promoters, or control persons, or
  - (iii) the investment fund manager of the issuer or any of the investment fund manager's officers, directors or control persons;
- (f) a person or company that has prepared or certified any part of the prospectus, or that is named as having prepared or certified a report or valuation used in connection with the prospectus, is not acceptable;
- (g) an escrow or pooling agreement in the form that the Director considers necessary or advisable with respect to the securities has not been entered into; or
- (h) adequate arrangements have not been made for the holding in trust of the proceeds payable to the issuer from the sale of the securities pending the distribution of the securities.

**4. Subsection 63 (1) of the Act is repealed and the following substituted:**

**Forms of prospectus**

(1) A person or company may, if permitted by the regulations, file a short form of preliminary prospectus, short form of prospectus, pro forma prospectus, preliminary simplified prospectus, simplified prospectus or pro forma simplified prospectus under section 53 or 62 in the prescribed form and any such prospectus that complies with the applicable regulations shall, for the purposes of section 56, be considered to provide sufficient disclosure of all material facts relating to the securities issued or proposed to be distributed under the prospectus.

**5. Subsections 72 (8) to (11) of the Act are repealed and the following substituted:**

**List of defaulting reporting issuers**

(8) The Commission may publish a list of reporting issuers who are in default of any requirement of this Act or the regulations.

**6. Sections 83 and 83.1 of the Act are repealed.**

**7. Subsection 104 (1) of the Act is repealed and the following substituted:**

**Applications to the Commission**

(1) On application by an interested person, if the Commission considers that a person or company has not complied with, or is not complying with, a requirement under this Part or the regulations, the Commission may make an order,

- (a) restraining the distribution of any document or any communication used or issued in connection with a take-over bid or issuer bid;
- (b) requiring an amendment to or variation of any document or any communication used or issued in connection with a take-over bid or issuer bid and requiring the distribution of amended, varied or corrected information or documents;

- (c) directing any person or company to comply with a requirement under this Part or the regulations;
- (d) restraining any person or company from contravening a requirement under this Part or the regulations; and
- (e) directing the directors and officers of any person or company to cause the person or company to comply with or to cease contravening a requirement under this Part or the regulations.

**8. Section 105 of the Act is repealed and the following substituted:**

**Applications to Court**

105. On application by an interested person, if the Superior Court of Justice is satisfied that a person or company has not complied with a requirement under this Part or the regulations, the Superior Court of Justice may make such interim or final order as the Court thinks fit, including, without limitation, an order,

- (a) compensating any interested person who is a party to the application for damages suffered as a result of a contravention of a requirement of this Part or the regulations;
- (b) rescinding a transaction with any interested person, including the issue of a security or an acquisition and sale of a security;
- (c) requiring any person or company to dispose of any securities acquired pursuant to or in connection with a take-over bid or an issuer bid;
- (d) prohibiting any person or company from exercising any or all of the voting rights attaching to any securities; or
- (e) requiring the trial of an issue.

**9. Subsection 106 (2) of the Act is amended by adding "and" at the end of clause (a), by striking out "and" at the end of clause (b) and by repealing clause (c).**

**10. Sections 107 and 108 of the Act are repealed and the following substituted:**

**Insider reporting**

107. (1) Within 10 days of becoming an insider or within such other time period as may be prescribed, a person or company who becomes an insider of a reporting issuer, other than a mutual fund, shall file a report disclosing, in the prescribed manner and form, any direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer and any interest in, or right or obligation associated with, a related financial instrument and the insider shall make such other disclosure as may be required by the regulations.

**Same**

(2) Within 10 days, or within such other time period as may be prescribed, of any change in the direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer or any interest in, or right or obligation associated with, a related financial instrument, an insider of a reporting issuer, other than a mutual fund, shall file a report disclosing, in the prescribed manner and form, such change and the insider shall make such other disclosure as may be required by the regulations.

**11. Section 116 of the Act is repealed and the following substituted:**

**Standard of care, investment fund managers**

116. Every investment fund manager,

- (a) shall exercise the powers and discharge the duties of their office honestly, in good faith and in the best interests of the investment fund; and
- (b) shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

**12. The Act is amended by adding the following section:**

**Additional remedies**

122.1 (1) If a person or company is convicted of an offence under this Act, the court may, in addition to any penalty, order the convicted person or company to make restitution or pay compensation in relation to the offence to an aggrieved person or company.

**Notice**

(2) If a court makes an order for restitution or compensation, it shall cause a copy of the order or a notice of the content of the order to be given to the person or company to whom the restitution or compensation is ordered to be paid.

**Filing**

(3) An order for restitution or compensation may be filed with a local registrar of the Superior Court of Justice and the responsibility for filing shall be on the person or company to whom the restitution or compensation is ordered to be paid.

**Enforcement**

(4) An order for restitution or compensation filed under subsection (3) may be enforced as if it were an order of the court.

**Postjudgment interest**

(5) Section 129 of the *Courts of Justice Act* applies in respect of an order for restitution or compensation filed under subsection (3) and, for that purpose, the date of filing shall be deemed to be the date of the order.

**Limitation**

(6) A person or company is not entitled to participate in a proceeding in which an order may be made under this section solely on the basis that the person or company has a right of action against a defendant to the proceeding or that the person or company may be entitled to receive an amount under the order.

**Civil remedies protected**

(7) A civil remedy for an act or omission is not affected by reason only that an order for restitution or compensation under this section has been made in respect of that act or omission.

**13. Clause 130 (1) (d) of the Act is repealed and the following substituted:**

- (d) every person or company whose consent to disclosure of information in the prospectus has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by them; and

**14. (1) The definition of "control person" in section 138.1 of the Act is repealed.**

**(2) The definitions of "core document" and "failure to make timely disclosure" in section 138.1 of the Act are repealed and the following substituted:**

"core document" means,

- (a) a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a notice of change or variation in respect of a take-over bid circular, issuer bid circular or directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements and interim financial statements of the responsible issuer, where used in relation to,
  - (i) a director of a responsible issuer who is not also an officer of the responsible issuer,
  - (ii) an influential person, other than an officer of the responsible issuer or an investment fund manager where the responsible issuer is an investment fund, or

- (iii) a director or officer of an influential person who is not also an officer of the responsible issuer, other than an officer of an investment fund manager,
- (b) a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a notice of change or variation in respect of a take-over bid circular, issuer bid circular or directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements, interim financial statements and a material change report required by subsection 75 (2) or the regulations of the responsible issuer, where used in relation to,
  - (i) a responsible issuer or an officer of the responsible issuer,
  - (ii) an investment fund manager, where the responsible issuer is an investment fund, or
  - (iii) an officer of an investment fund manager, where the responsible issuer is an investment fund, or
- (c) such other documents as may be prescribed by regulation for the purposes of this definition; ("document essentiel")

"failure to make timely disclosure" means a failure to disclose a material change in the manner and at the time required under this Act or the regulations; ("non-respect des obligations d'information occasionnelle")

**(3) Clause (c) of the definition of "influential person" in section 138.1 of the Act is amended by striking out "senior".**

**15. Subsection 138.3 (4) of the Act is amended by adding "or the regulations" after "Act".**

**16. (1) Clause 138.4 (8) (a) of the Act is amended by adding at the end "or the regulations".**

**(2) Clause 138.4 (8) (e) of the Act is repealed and following substituted:**

- (e) where the material change became publicly known in a manner other than the manner required under this Act or the regulations, the responsible issuer promptly disclosed the material change in the manner required under this Act or the regulations.

**(3) Subsection 138.4 (10) of the Act is amended by adding "or the regulations" after "Act" in the portion before clause (a).**

**(4) Subsection 138.4 (15) of the Act is amended by adding "or the regulations" after "Act" wherever it appears.**

**17. Subsections 138.5 (1) and (2) of the Act are amended by adding "or the regulations" after "Act" wherever it appears.**

**18. (1) Paragraph 9 of subsection 143 (1) of the Act is repealed and the following substituted:**

- 9. Providing for exemptions from the requirements of section 41 in respect of dealers.

**(2) Paragraph 15 of subsection 143 (1) of the Act is repealed and the following substituted:**

- 15. Prescribing categories or subcategories of issuers for purposes of the prospectus requirements under this Act, the regulations and the rules and classifying issuers into categories or subcategories.

**(3) Paragraph 16 of subsection 143 (1) of the Act is amended by striking out the portion before subparagraph i and substituting the following:**

- 16. Regulating in respect of, or varying this Act to facilitate, expedite or regulate in respect of, the distribution of securities, or the issuing of receipts, including by establishing,

.....

**(4) Subsection 143 (1) of the Act is amended by adding the following paragraph:**

- 16.1 Prescribing requirements for the certification of prospectuses by persons and companies in relation to the following:

- i. if the issuer is a trust, requiring individuals who perform functions for the issuer similar to those performed by a chief executive officer or chief financial officer of an issuer to certify the prospectus,
- ii. if the issuer is a trust and its business or a material part of its business is conducted through a person or company other than the issuer, requiring a director and the chief executive officer and the chief financial officer of the person or company, or individuals who perform functions for the person or company similar to those performed by a chief executive officer or chief financial officer, to certify the prospectus,
- iii. if the issuer is a limited partnership, requiring the general partner of the issuer and individuals who perform functions for the issuer similar to those performed by a chief executive officer or a chief financial officer of an issuer to certify the prospectus, and
- iv. if the issuer is not organized as a company, trust or limited partnership, requiring persons or companies that perform functions similar to those performed by persons or companies described in subparagraph i, ii or iii or section 58 to certify the prospectus.

**(5) Subsection 143 (1) of the Act is amended by adding the following paragraph:**

- 22.1 Respecting the preparation, form and content requirements applicable to the public dissemination of forward-looking information by reporting issuers where the dissemination is not part of a required filing.

**(6) Paragraph 28 of subsection 143 (1) of the Act is amended by,**

**(a) striking out the portion before subparagraph i and substituting the following:**

- 28. Regulating take-over bids, issuer bids, insider bids, going-private transactions, business combinations, and related party transactions, including,

.....

**(b) adding "business combinations" after "going-private transactions" in subparagraph v.**

**(7) Subsection 143 (1) of the Act is amended by adding the following paragraphs:**

- 30.1 Regulating the disclosure or furnishing of information to the public or the Commission by insiders, including,
  - i. prescribing filing requirements for the reporting by insiders of their respective direct or indirect beneficial ownership of, or control or direction over, securities of a reporting issuer or changes in ownership, control or direction,
  - ii. prescribing requirements respecting the reporting by insiders of any interest in or right or obligation associated with a related financial instrument or changes in such interests, rights or obligations,
  - iii. prescribing requirements respecting the reporting by insiders of any agreement, arrangement or understanding that alters, directly or indirectly, an insider's economic interest in a security or an insider's economic exposure to a reporting issuer or changes in such agreements, arrangements or understandings.
- 30.2 Prescribing requirements in respect of a reporting issuer to facilitate compliance by insiders of the reporting issuer with this Act and with the rules made under paragraph 30.1.
- 30.3 Requiring that reports under paragraph 30.1 shall also provide information for the period of up to six months before a person or company became an insider.

**(8) Paragraph 31 of subsection 143 (1) of the Act is repealed and the following substituted:**

- 31. Regulating investment funds and the distribution and trading of the securities of investment funds, including,
  - i. varying Part XV or Part XVIII by prescribing additional disclosure requirements in respect of investment funds and requiring or permitting the use of particular forms or types of additional offering or other documents in connection with the funds,

- ii. prescribing permitted investment policy and investment practices for investment funds and prohibiting or restricting certain investments or investment practices for investment funds,
- iii. prescribing requirements governing the custodianship of assets of investment funds,
- iv. prescribing minimum initial capital requirements for investment funds making a distribution and prohibiting or restricting the reimbursement of costs in connection with the organization of a fund,
- v. prescribing matters affecting investment funds that require the approval of security holders of the fund, the Commission or the Director, including, in the case of security holders, the level of approval,
- vi. prescribing requirements in respect of the calculation of the net asset value of investment funds,
- vii. prescribing requirements in respect of the content and use of sales literature, sales communications or advertising relating to investment funds or the securities of investment funds,
- viii. designating mutual funds as private mutual funds and prescribing requirements for private mutual funds,
- ix. respecting sales charges imposed by a distribution company or contractual plan service company under a contractual plan on purchasers of shares or units of an investment fund, and commissions or sales incentives to be paid to registrants in connection with the securities of an investment fund,
- x. prescribing the circumstances in which a plan holder under a contractual plan has the right to withdraw from the contractual plan,
- xi. prescribing procedures applicable to investment funds, registrants and any other person or company in respect of sales and redemptions of investment fund securities and payments for sales and redemptions,
- xii. prescribing requirements in respect of, or in relation to, promoters, advisers or persons and companies who administer or participate in the administration of the affairs of investment funds.

**(9) Paragraph 33 of subsection 143 (1) of the Act is repealed and the following substituted:**

- 33. Prescribing requirements relating to the qualification of a registrant to act as an adviser to an investment fund.

**(10) Subparagraph 35 iii of subsection 143 (1) of the Act is repealed and the following substituted:**

- iii. prescribing requirements that apply to investment funds, commodity pools or other issuers.

**(11) Paragraph 36 of subsection 143 (1) of the Act is repealed and the following substituted:**

- 36. Varying this Act with respect to foreign issuers to facilitate distributions, compliance with requirements applicable or relating to reporting issuers and the making of take-over bids, issuer bids, insider bids, going-private transactions, business combinations and related party transactions where the foreign issuers are subject to requirements of the laws of other jurisdictions that the Commission considers are adequate in light of the purposes and principles of this Act.

**(12) Subparagraphs 40 ii and iii of subsection 143 (1) of the Act are repealed and the following substituted:**

- ii. designating, for purposes of subsection 88 (1), the jurisdictions whose requirements are substantially similar to the requirements of Part XIX,
- iii. designating a person or company for the purpose of the definition of "market participant",
- iv. designating classes of persons or companies not to be insiders for the purpose of the definition of "insider", and
- v. designating classes of persons or companies for the purpose of clause (f) of the definition of "insider" in subsection 1 (1), if the persons or companies would reasonably be expected to have, in the ordinary course, access to material information about the business, operations, assets or revenue of the issuer, to be insiders.

**(13) Paragraph 46 of subsection 143 (1) of the Act is repealed and the following substituted:**

46. Providing for electronic signatures for the signing of documents and prescribing the circumstances in which persons or companies shall be deemed to have signed or certified documents on an electronic or computer-based system for any purpose of this Act, the regulations or the rules.

**(14) Paragraph 49 of subsection 143 (1) of the Act is repealed and the following substituted:**

49. Permitting or requiring, or varying this Act to permit or require, methods of filing or delivery, to or by the Commission, issuers, registrants, security holders or others, of documents, information, notices, books, records, things, reports, orders, authorizations or other communications required under or governed by Ontario securities law.

**(15) Paragraph 56 of subsection 143 (1) of the Act is repealed and the following substituted:**

56. Prescribing, providing for exemptions from or varying any or all of the time periods in this Act or the regulations.

**19. Paragraph 4 of subsection 143.2 (2) of the Act is repealed and the following substituted:**

4. A reference to the authority under which the rule is proposed or a statement that the Commission is seeking legislative amendments to provide the requisite rule-making authority.

**20. (1) Subsections 143.10 (3) and (4) of the Act are repealed and the following substituted:**

**Coming into effect**

(3) If the Minister approves the agreement, memorandum of understanding or arrangement, it comes into effect on the date specified in the agreement, memorandum of understanding or arrangement or, if no date is specified, on the day it is approved.

**Same**

(4) If the Minister does not approve or reject the agreement, memorandum of understanding or arrangement within 60 days after it is published in the Bulletin, it comes into effect on the date specified in the agreement, memorandum of understanding or arrangement or, if no date is specified, on the 60th day after its publication in the Bulletin.

**(2) Section 143.10 of the Act is amended by adding the following subsection:**

**Exception**

(6) The obligation to publish set out in subsection (1) does not apply to an agreement, memorandum of understanding or arrangement if the principal purpose of the agreement, memorandum of understanding or arrangement relates to,

- (a) the provision of products or services by a party not named in subsection (1);
- (b) the sharing of costs incurred by a party named in subsection (1); or
- (c) the provision of services by or temporary transfer of an employee of a party named in subsection (1).

**Commencement**

**21. (1) Subject to subsection (2), this Schedule comes into force on the day the *Budget Measures Act, 2006 (No. 2)* receives Royal Assent.**

**Same**

**(2) Subsection 1 (8), sections 9 and 10 and subsection 18 (7) come into force on a day to be named by proclamation of the Lieutenant Governor.**